

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

APR 04 2003

OFFICE OF  
MANAGING DIRECTOR

Mr. Barry D. Wood  
Wood, Maines & Brown  
1827 Jefferson Place, NW  
Washington, D.C. 20036

Re: Request of Waiver of FY 2002 Regulatory Fees  
Fee Control No. 00000RROG-03-043

Dear Mr. Wood:

This is in response to your request, dated September 25, 2002 for a waiver of regulatory fees for Fiscal Year 2002, that you filed on behalf of A-O Broadcasting Corporation (A-O), licensee of FM broadcast station KTMN, Cloudcroft, New Mexico. In support of your waiver request, you state that shortly after the station was built and an application was filed on September 21, 2001, A-O needed to take the station dark (cease operating) because of potential for excessive RF exposure at its transmitter site. You also explain that the station has not been income producing and is attempting to borrow additional funds to relocate the station's transmitting facilities and to return the station to the air.

Our records reflect that KTMN was silent as of November 7, 2001, and that the Commission notified the licensee on January 3, 2003 that the license was automatically forfeited for not resuming operations by November 7, 2002.<sup>1</sup>

Your Petition for Reconsideration of the license cancellation is pending. *Petition for Reconsideration*, filed Feb. 3, 2003. In *Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12,759, 12,762 (1995), the Commission, noting that dark stations are generally either without or with greatly reduced revenues, and that imposition of a regulatory fee could be an impediment to the restoration of service by dark stations, held that it would waive the regulatory fee for stations which have ceased operation.

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<sup>1</sup> *Letter to Paul H. Brown, Esq.*, 18 FCC Rcd 35 (Aud. Div., Jan. 3, 2003). *See Implementation of Section 403(1) of the Telecommunications Act of 1996*, FCC 96-218, ¶¶ 4-5 (May 17, 1996)

Mr. Barry D. Wood

2.

Accordingly, your request is granted and the FY 2002 regulatory fee for A-O Broadcasting Corporation, as licensee of FM Broadcast Station KTMN, is waived. The waiver shall remain in effect until such time as the station is reactivated, should your Petition for Reconsideration of your automatic forfeiture be granted.

You have also requested confidential treatment of the material that you submitted with your fee waiver request. Pursuant to Section 0.459(d)(1) of the Commission's rules, 47 C.F.R. § 0.459(d)(1), we do not routinely rule on requests for confidential treatment until we receive a request for access to the records. The records are treated confidentially in the meantime. If a request for access to the information submitted in conjunction with your regulatory fees is received, you will be notified and afforded the opportunity to respond at that time.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark A. Reger', with a stylized flourish at the end.

Mark A. Reger  
Chief Financial Officer

WOOD, MAINES & BROWN

CHARTERED  
ATTORNEYS AT LAW  
1827 JEFFERSON PLACE, N.W.  
WASHINGTON, D.C. 20036

\$500

BARRY D. WOOD  
RONALD D. MAINES  
PAUL H. BROWN  
STUART W. NOLAN, JR.

TELEPHONE - (202) 293-5333  
FACSIMILE - (202) 293-9811  
E-MAIL - WMB@WMBLAW.ORG

000002206-03-043

\*Admitted in Virginia only

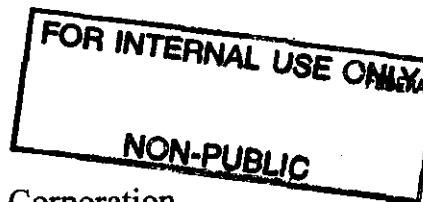
September 25, 2002

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RECEIVED

SEP 25 2002

Attn: Managing Director



FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: A-O Broadcasting Corporation  
KTMN, Cloudcroft, New Mexico  
Facility Id No. 89049  
Request for Waiver of Regulatory Fees  
Request for Deferral of Regulatory Fees  
FY 2002

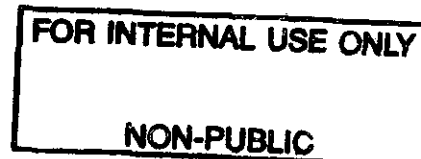
**CONFIDENTIAL TREATMENT REQUESTED**

Dear Ms. Dortch:

On behalf of our client A-O Broadcasting Corporation ("A-O"), licensee of FM broadcast station KTMN, Cloudcroft, New Mexico, and pursuant to Section 1.1166 of the Rules, we hereby request a waiver of regulatory fees for FY 2002. Confidential treatment is requested regarding the financial data that is voluntarily disclosed to the Commission in this letter and the accompanying financial statements.

A-O constructed FM station KTMN late last year. A license application was filed on September 24, 2001. Shortly thereafter, A-O needed to take KTMN dark because of the potential for excessive RF exposure at its transmitter site. Radio station KTMN is the sole asset of A-O. Robert Flotte, the sole owner of A-O, has no ownership interest in any other commercial radio station.

As is shown more fully by the enclosed tax returns for 2000 and 2001, KTMN has never had any revenue. It was on the air last year for too brief a period to justify the sale of advertising. Extreme financial hardship on the part of the licensee prevents payment of the regulatory fee, including payment of the regulatory fee pending action by the Commission on this request for a waiver of the fee.



Section 1.1165 of the Rules allows the Commission to waive, reduce or defer regulatory fees where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Waiver of the FY 2002 regulatory fee for KTMN would promote the public interest by allowing KTMN to return to the air more promptly and serve its community of license.

For the tax year ending March 31, 2001, KTMN had not yet been constructed. Consequently, the licensee's tax return shows no income. The station's assets consisted only of radio equipment valued at A-O's cost basis of \$79,097.

Further funds were added to the licensee by its owner during the tax year ending March 31, 2002 in the process of building the station. During this year, money was borrowed, equipment was purchased and the station was constructed. The tax return shows total assets of \$131,262. No income was received during this tax year.

Red ink continues to cover KTMN's accounts thus far in 2002. The station has remained dark during the entire tax year, to date. Accordingly, no air time has been sold. Additional funds must be borrowed in order to effect relocation of the station's transmitting facilities and to return the station to the air.

This is as clear a case as there ever was of regulatory fees constituting an attempt to squeeze blood from a turnip. KTMN is not operational. Only this week (September 23, 2002) A-O amended its application to relocate KTMN's facilities to an established electronics site in order to return to service. Clearly, this move will consume additional capital, and leave even less to pay the regulatory fee. The Commission should appreciate that KTMN's owner is trying to provide service, in the public interest, to the underserved area of Cloudcroft and its environs. The owner has personally received no financial benefit whatsoever from KTMN.

#### Confidential Treatment of Data

This request for waiver or deferral of regulatory fees necessarily requires that KTMN submit to the Commission confidential financial data. Pursuant to Section 0.459(b) of the Rules, we therefore request confidential treatment of all financial data.

*(b) Each such request shall contain a statement of the reasons for withholding the materials from inspection (see §0.457) and of the facts upon which those records are based, including:*

*(1) Identification of the specific information for which confidential treatment is sought;*

A-O seeks confidential treatment of all of the financial data included in this letter.

*(2) Identification of the Commission proceeding in which the information was submitted or a description of the circumstances giving rise to the submission;*

A-O is requesting a waiver of payment regulatory fees for FY 2002.

*(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged;*

A-O does not disclose this data to others, except to the Internal Revenue Service. A-O also discloses this data to its attorneys and accountants, who are under an ethical obligation not to disclose it.

*(4) Explanation of the degree to which the information concerns a service that is subject to competition;*

A-O will compete in the commercial broadcast radio service and, once it returns to the air, is subject to competition from other such broadcasters, as well as other commercial media, in south central New Mexico.

*(5) Explanation of how disclosure of the information could result in substantial competitive harm;*

Disclosure of the financial information would result in substantial competitive harm for the reasons that led the Commission to provide blanket confidentiality on all Form 324 financial reports filed by broadcasters over several decades. Those reasons include the danger that a given station's customers may go elsewhere if they learn of the nature of the broadcaster's financial situation. Customers may not commit to longer-term contracts if they have any reason to believe that the station may not be able to compete effectively because of

a lack of funding. In addition, a station's competitors will be quick to exploit a perceived inability to match marketing efforts. Such competitive harm to a licensee could affect its ability to deliver optimal programming, and to fund equipment purchases.

*(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure;*

KTMN has not shared its financial information with others, except as specified in response to question 3, above.

*(7) Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties;*

The information is not available to the public and has not been previously disclosed except to the Internal Revenue Service and to KTMN's accountants and attorneys.

*(8) Justification of the period during which the submitting party asserts that material should not be available for public disclosure; and*

The financial material presented to the Commission should not be available for public disclosure for a period of ten years after a final decision regarding the grant of KTMN's request. After ten years, the financial data should no longer compromise KTMN with respect to the station's competitors.

*(9) Any other information that the party seeking confidential treatment believes may be useful in assessing whether its request for confidentiality should be granted.*

Confidential treatment of these materials is essential if A-O is to become competitive. Premature disclosure of the data would have a devastating effect on A-O.

*(e) If the materials are submitted voluntarily (i.e., absent any direction by the Commission), the person submitting them may request the Commission to return the materials without consideration if the request for confidentiality should be denied. In that event, the materials will ordinarily be returned (e.g., an application will be returned if it cannot be considered on a confidential basis). Only in the unusual instance where the public interest so requires will the materials be made available for public inspection. However, no materials submitted with a request for confidentiality will be returned if a request for*

Marlene Dortch  
September 25, 2002  
Page 5

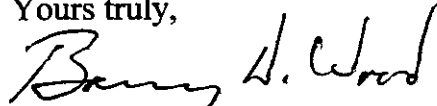
*inspection is filed under §0.461. If submission of the materials is required by the Commission and the request for confidentiality is denied, the materials will be made available for public inspection.*

A-O herewith submits the information voluntarily. Should the Commission determine that the information will not be afforded confidential treatment, A-O requests that the Commission agree to consider a submission of the information, with the confidential materials therein redacted.

In the unlikely event that the Commission should, inexplicably, deny this request, it should be considered as a petition for deferral of any duty to pay off the subject regulatory fee due to financial hardship, for purposes of satisfying Section 1.1166 of the Rules.

Please call Paul Brown of this firm or the undersigned if you have any questions regarding this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Barry D. Wood". The signature is fluid and cursive, with the first name "Barry" being more prominent.

Barry D. Wood  
counsel for  
A-O Broadcasting Corporation

kkb  
enc.

FILE COPY

AORROADCAST 08/24/2002 11:10 AM

Form 1120

## U.S. Corporation Income Tax Return

OMB No. 1545-0123

For calendar year 2001 or tax year beginning 4/01/01 ending 3/31/02

2001

Department of the Treasury  
Internal Revenue Service

Instructions are separate. See page 20 for Paperwork Reduction Act Notice.

## A Check if a:

- 1 Consolidated return (attach Form 951) ☐
- 2 Personal holding co. (attach Sch. PH) ☐
- 3 Personal service corp. (as defined in Temporary Regs. sec. 1.441-4T; see instructions) ☐

Use  
IRS  
label.  
Other-  
wise,  
print or  
type.

Name Number, street, &amp; room or suite no. City or town, state, and ZIP code

A-O BROADCASTING CORP

230 GLACIER DRIVE

ALAMOGORDO

NM 88310-8269

B Employer identification number

85-0463874

C Date incorporated

11/05/84

D Total assets (see page 8 of instructions)

131,262

## E Check applicable boxes:

(1)

Initial return

(2)

Final return

(3)

Name change

(4)

Address change \$

Income	1a	Gross rept./sales		b	Less rtn. & allowances		c	Bal	
	2	Cost of goods sold (Schedule A, line 8)					1c		
	3	Gross profit. Subtract line 2 from line 1c					2		
	4	Dividends (Schedule C, line 19)					3		
	5	Interest					4		
	6	Gross rents					5		
	7	Gross royalties					6		
	8	Capital gain net income (attach Sch. D (Form 1120))					7		
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)					8		
	10	Other income (see page 8 of instructions-attach schedule)					9		
	11	Total income. Add lines 3 through 10					10		
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)					11		
	13	Salaries and wages (less employment credits)					12		
	14	Repairs and maintenance					13		
	15	Bad debts					14		
	16	Rents					15		
	17	Taxes and licenses					16		
	18	Interest					17	110	
	19	Charitable contributions (see page 10 of instructions for 10% limitation)					18	392	
	20	Depreciation (attach Form 4562)		20			19		
	21	Less depreciation claimed on Schedule A and elsewhere on return		21a			20		
	22	Depletion					21b		
23	Advertising					22			
24	Pension, profit-sharing, etc., plans					23			
25	Employee benefit programs					24			
26	Other deductions (attach schedule)					25			
27	Total deductions. Add ln. 12 through 26					26			
28	Taxable income before net operating loss deduction & special deductions. Subtract line 27 from ln. 11					27	502		
29	Less: a Net operating loss (NOL) deduction (see page 13 of instr.)		29a			28	-502		
	b Special deductions (Schedule C, line 20)		29b			29			
30	Taxable income. Subtract line 29c from line 28					30	-502		
31	Total tax (Schedule J, line 11)					31	0		
Tax and Payments	32	Payments: a 2000 overpayment credited to 2001	32a						
	b 2001 estimated tax payments	32b							
	c Less 2001 refund applied for on Form 4466	32c							
	d Tax deposited with Form 7004	32d							
	e Credit for tax paid on undistributed capital gains (attach Form 2439)	32e							
	f Credit for Federal tax on fuels (attach Form 4136). See instructions	32f							
	g Credit for Federal tax on fuels (attach Form 4136). See instructions	32g							
	33	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached					32h		
	34	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed					33		
	35	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid					34		
	36	Enter amt. of line 35 you want. Credited to 2002 est. tax					35		

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instr.)? ☒ Yes ☐ No

Signature of officer

ROBERT J FLOTTE

Date

PRESIDENT

Title

Paid Preparer's Use Only

Preparer's signature

Date

5/24/02

Check if self-employed

Preparer's SSN or PTIN

P00230754

Firm's name (or yours if self-employed), address, and ZIP code

DEANNA BRADY, CPA, LLC

1100 JEFFERSON AVE

ALAMOGORDO, NM

88310-5029

Phone no.

505-437-5550

Form 1120 (2001)

DA



A08BROADCAST 05/14/2001 8:27 PM

Form 1120

## U.S. Corporation Income Tax Return

OMB No. 1545-0123

For calendar year 2000 or tax year beginning 4/01/00, ending 3/31/01

2000

Department of the Treasury  
Internal Revenue Service

Instructions are separate. See page 1 for Paperwork Reduction Act Notice.

## A Check if a:

- 1 Consolidated return (attach Form 981) ☐
- 2 Personal holding co. (attach Sch. PH) ☐
- 3 Personal service corp. (as defined in temporary Regs. sec. 1.441-4T; see instructions) ☐

Use  
IRS  
label.  
Other-  
wise,  
print or  
type.

Name Number, street, &amp; room or suite no. City or town, state, and ZIP code

A-O BROADCASTING CORP

B Employer identification number

85-0463874

C Date incorporated

11/05/84

D Total assets (see page 8 of instructions)

\$ 79,097

E Check applicable boxes: (1) Initial return (2) Final return (3) Change of address

Income	1a	Gross rcpt./sales		b	Less rtn. & allowances		c	Net	1c	
	2	Cost of goods sold (Schedule A, line 8)							2	
	3	Gross profit. Subtract line 2 from line 1c							3	
	4	Dividends (Schedule C, line 19)							4	
	5	Interest							5	
	6	Gross rents							6	
	7	Gross royalties							7	
	8	Capital gain net income (attach Sch. D (Form 1120))							8	
	9	Net gain or (loss) from Form 4797, Part II, line 18 (attach Form 4797)							9	
	10	Other income (see page 8 of instructions-attach schedule)							10	
	11	Total income. Add lines 3 through 10							11	
Deductions (See instructions for limitations on deductions.)	12	Compensation of officers (Schedule E, line 4)							12	
	13	Salaries and wages (less employment credits)							13	
	14	Repairs and maintenance							14	
	15	Bad debts							15	
	16	Rents							16	
	17	Taxes and licenses							17	
	18	Interest							18	
	19	Charitable contributions (see page 11 of instructions for 10% limitation)							19	
	20	Depreciation (attach Form 4562)	20							
	21	Less depreciation claimed on Schedule A and elsewhere on return	21a						21b	
	22	Depletion							22	
	23	Advertising							23	
	24	Pension, profit-sharing, etc., plans							24	
	25	Employee benefit programs							25	
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27	Total deductions. Add in. 12 through 26							27		
28	Taxable income before net operating loss deduction & special deductions. Subtract line 27 from in. 11							28		
29	Less: a Net operating loss (NOL) deduction (see page 13 of instr.)	29a								
	b Special deductions (Schedule C, line 20)	29b						29c		
Tax and Payments	30	Taxable income. Subtract line 29c from line 28							30	
	31	Total tax (Schedule J, line 11)							31	
	32	Payments:								
	a	1999 overpayment credited to 2000	32a							
	b	2000 estimated tax payments	32b							
	c	Less 2000 refund applied for on Form 4466	32c							
	d	Tax deposited with Form 7004	32d							
	e	Credit for tax paid on undistributed capital gains (attach Form 2439)	32e							
	f	Credit for Federal tax on fuels (attach Form 4136). See instructions	32f							
	g	Estimated tax penalty (see page 14 of instructions). Check if Form 2220 is attached	32g						32h	
	33	Tax due. If line 32h is smaller than the total of lines 31 and 33, enter amount owed							33	
34	Overpayment. If line 32h is larger than the total of lines 31 and 33, enter amount overpaid							34		
35	Enter amt. of line 35 you want: Credited to 2001 est. tax							35		
36	Refunded							36		

Sign  
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer ROBERT J. FLOTTE Date Title PRESIDENT

Paid

Preparer's  
Use Only

Preparer's signature Date 5/14/01 Check if self-employed ☒ Preparer's SSN or PTIN P00230754

Firm's name (or yours if self-employed) DEANNA BRADY, CPA EIN 85-0407009

address, and ZIP code 1100 JEFFERSON ALAMOGORDO, NM 88310 Phone no. 505-437-5550

Form 1120 (2000)

TOTAL P.03